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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street, NW
Washington, DC 20037

In re application of

David K. Herman

Application No. 09/880,788

Filed: June 15, 2001

For: JUST IN TIME DEMAND PULL PROCESS AND
ASSOCIATED APPARATUS

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:
:
: **DECISION ON REQUEST
FOR WITHDRAWAL OF
ATTORNEY**

This is a decision on the request filed on April 14, 2005, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

- A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;
- B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and
- C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney in the above-identified application is not approved because the request does not comply with Items A) and B).

As to Item A), the attorneys listed in the request do not correspond with those named in the Power of Attorney in the declaration, thereby creating confusion as to who is withdrawing. Therefore, some attorneys originally appointed would still be of record if the request were approved. It does not appear that that is the intent of the request. To alleviate this problem, it is suggested that the request be resubmitted and that such request specifically state that the signing attorney is signing on behalf of all attorneys of record in this application.

As to Item B), while a reason may be provided by referencing a specific portion of 37 CFR 10.40, the reason must deal with actions by the client. In this case, there is nothing in the file record that indicates the existence of an assignee or that the assignee is the client. Absent a 3.73(b) statement, the "client" referred to in 37 CFR 10.40 is seen as being those individuals who conferred power upon the attorneys, in this case the inventors.



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SNM/pav: 05/12/05